IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CONTEMPT PETITION NO.366 OF 2003
IN
WRIT PETITION NO.5174 OF 2000

Subhash Shankar Gaikwad .... Petitioner
Vs.
Madhukar Kokate & others .... Respondents

Sarvasri Sanjiv Sawant & H.V. Kode for the Petitioner.

Shri A.H. Palekar, Asst. Government Pleader, for the State.

Ms Veena B. Thadhani for the Respondent Nos.5 to 15.

WITH

CIVIL APPLICATION NO.38 OF 2004
IN
CONTEMPT PETITION NO.366 OF 2003
IN
WRIT PETITION NO.5174 OF 2000

Rajaram Shankar Gaikwad .... Applicant
Vs.
Madhukar Kokate & others .... Respondents
And
Subhash S. Gaikwad .... Respondent

Ms Veena B. Thadani for the Applicant.

Shri A.H. Palekar, Asst. Government Pleader, for the State.

Sarvasri Sanjiv Sawant & H.V. Kode for the Respondent S.S. Gaikwad.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: OCTOBER 08, 2004

P.C:

1. Heard the learned Advocates for the parties.

2. The grievance of the petitioner relates to non-compliance of the order passed by the Division Bench of this Court on 28-3-2001 in Writ Petition No.5174 of 2000.

3. By the order dated 28-3-2001 passed in Writ Petition No.5174 of 2000, the Division Bench had directed the Collector of Pune to direct the competent authority to take action against the encroachers on the public land and further to take appropriate action and complete such proceedings within a period of six months from the date of the order. While contending that inspite of the said specific direction, the authorities had not complied with the same, the petitioner further alleged that the structure belonging to the respondent No.15 herein was not subjected to necessary action inspite of the fact that the same was illegally constructed. It was also apprehended that the respondent No.15 may succeed in obtaining liquor licence in relation to the liquor

business in such structure and, therefore, apart from action under the Contempt of Courts Act, sought relief against the respondent No.15 to restrain the authorities from granting liquor licence to the respondent No.15 in relation to the structure. While issuing notice to the respondents, this Court by its order dated 2-12-2003 directed maintenance of status quo.

4. The respondents, including the Collector of Pune, have filed affidavits submitting that they have complied with the directions, though it was not within the specified period, simultaneously tendering unconditional apology on that count.

5. The respondent No.15 has also filed Civil Application No.38 of 2004 seeking relief in the nature of vacating the ex parte order passed on 2-12-2003 contending that it is causing great prejudice to him. Attention is sought to be drawn to the various affidavits and documents which have been placed on record by the respondents which apparently reveal that the structure belonging to the respondent No.15 is neither situated in the Government land nor it is an illegal structure.

6. The Collector of Pune, in his affidavit in-reply, has categorically stated that:-

"12. With reference to para 5 of the Contempt Petition, it is seen from office of Tahasildar's Daund's record that letter No.LAND/WS/1043/2001 dated 31-7-2001 was given to Taluka Inspector of Land Records, Daund for measuring the land Gat Nos.898, 903, 912/5, 917 and 849 as to ascertain the outer boundary marks of these Gat Numbers and encroachment or tresspasser. Reminder letter was also send vide Tahasil Office letter No.LND/WS/1180/2001 dated 1-9-2001. The Taluka Inspector of Land Records got measured the Gat No.898/1/1, 898/1/2, 899 to 911, 912 and 917. The land of Gat No.849 being private land question of encroachment does not arise. After getting measurement report from T.I.L.R. Daund and asserting illegal encroachment on Government land legal proceeding was started against the encroachers for removing these illegal encroachments. The encroachment on Government lands bearing Gat Nos.898/1/1, 912 and 917 are removed completely. The possession of the

> vacant plot of land Gat No.898/1/1/ admeasuring 1 Hector 14 Are is given to the authority of M.S.R.T.C. which was granted for S.T. Depot."

It has been further held that:-

> "I say that Gat No.903 is sold in auction sale which is at present is not Government land, hence, question of encroachment on this land does not arise."

The Collector has further stated that the action of removing encroachments on the Government Zirayat land is also being taken and that the construction by the respondent Nos.14 and 15 cannot be said as encroachments. Even the resolution which was passed by the Gram Panchayat in its meeting held on 30-8-2003 disclose the confirmation of the fact that there has been no encroachment in the property bearing Gat No.898 either by the occupants of Gat No.903 or 904 and the little pieces of land belong to Rajaram Shankarrao Gaikwad and Appasaheb Manikrao Kad respectively and they have not done any encroachments.

7. The petitioner has not been able to place on record any material to dispute the contents of the affidavit filed by the Collector of Pune in respect of the latter's contention that the authorities have complied with the directions issued by this Court under its order dated 28-3-2001 in Writ Petition No.5174 of 2000. Indeed the authorities, apart from filing the affidavits, have also placed various other documents disclosing the action taken for removal of the encroachments, the extent of encroachments removed and date-wise action taken in the matter. None of the facts stated therein are controverted or even attempted to be controverted by the petitioner or any other person on his part or in support of his contention, nor there is any document on record to dispute the contention of the respondents that they have complied with the directions issued by this Court.

8. The affidavit in-reply filed by the respondent No.2, the Superintendent of Excise, also reveal that the authorities concerned in relation to the grant of liquor licences have verified about the eligibility of the respondent No.15 to obtain the liquor licence and as the respondent satisfies the requirement of law, necessary formalities for the eligibility of the grant of licence have been complied with.

9. Once it is apparent from the records that the authorities have complied with the directions issued by the Division Bench in relation to removal of the encroachments from the public land and the petitioner has not been able to convincingly dispute the said claim on the part of the respondents, there can be hardly any justification for proceeding against the respondents for contempt of Court. Undoubtedly, there has been delay in complying with the direction. Apart from the fact that the respondents have tendered apology in that regard, it is to be noted that the matter related to removal of number of illegal encroachments done on public land. Certainly encroachments cannot be removed totally ignoring the basic principles of natural justice and for the compliance of those formalities, certainly it takes some time. Bearing in mind, merely because the respondents were not able to comply with the directions within the period of six months, it cannot be held that they should be prosecuted for contempt of Court when the materials placed on record disclose genuine efforts on the part of the respondents to comply with the order and in fact they have taken appropriate action for removal of the encroachments on the public land.

10. In the result, therefore, there is no case for proceeding against the respondents for contempt of Court in relation to the order dated 28-3-2003. Hence the

contempt petition is liable to be dismissed and disposed of accordingly. At the same time, the Civil Application No.38 of 2004 needs to be allowed by vacating the interim order granted on 2-12-2003.

11. Accordingly, the contempt petition is dismissed. The interim relief granted on 2-12-2003 is hereby vacated. There shall be no order as to costs.

12. In view of dismissal of the Contempt Petition No.366 of 2003 in Writ Petition No.5174 of 2000, the Civil Application No.38 of 2004 does not survive and accordingly stands disposed of.